

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5798 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

PRAFULBHAI KRISHNASHANKER BHATT

Versus

STATE OF GUJARAT

Appearance:

THROUGH JAIL for Petitioner

Mr. D.P. Joshi, A.P.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/11/1999

ORAL JUDGEMENT

Heard learned Advocate Ms. S.G. Patel as amicus curie and learned A.G.P. Mr. D.P. Joshi for the respondents nos.1, 2 and 3.

The petitioner-Prafulbhai Krishnashanker Bhatt has moved the present petition through jail to challenge the detention order dated 23-1-1999 passed by the

respondent no.2-Commissioner of Police, Vadodara City against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) under Article 226 of the Constitution of India.

2. The matter was admitted on 6-8-1999, however, despite the claim made by the petitioner no legal aid was assigned and as such at the time of hearing Ms. S.G. Patel is appointed as amicus curia.

3.. The grounds of detention, supplied to the petitioner and produced on record inter alia indicate that four criminal cases for the offences made punishable under Sec.379 and/or 380 read with Section 114 of the Indian Penal Code have been registered against the petitioner, namely, (1) Cr no.336/98 at Karelibaug Police Station (2) CR no.369/98 at Pani Gate Police Station (3) CR no.253/98 at Navapura Police Station and (4) CR no.339/98 at Karelibaug Police Station. That all the cases are pending trial. It is alleged against the petitioner in the said cases that the petitioner is involved in theft of articles like mobile phone, typewriting machine etc. Over and above that, two witnesses on assurance of anonymity have given statement in respect to incident dated 9-11-1998, 13-11-1998 and 16-12-1998 regarding the antisocial activities of the petitioner.

3. That in consideration of the above stated material, the respondent no.2 as detaining authority has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Section 2(c) of "PASA". That resort to enforcement of general law not being sufficient to prevent the petitioner from continuing his antisocial activity, it is necessary to pass the detention order under "PASA" and hence, the impugned order is passed.

4. Ms. S.G.Patel has referred to and relied on the grounds of detention and has pointed out that on the date of passing the impugned order, the petitioner was in judicial custody. However instead of considering the aspect of less drastic remedy like cancellation of bail, the detaining authority appears to have passed the order on apprehension that on production of petitioner before the Court, the petitioner would apply for bail and after getting himself released on bail the petitioner is likely to continue his antisocial activity. That the said observation of the detaining authority discloses non

application of mind which has vitiated the subjective satisfaction rendering the impugned order invalid.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K.Thakkar & A.L.Dave,JJ.).

6. In the instant case also having considered the observations made by the detaining authority in the grounds of detention, I am constrained to hold that on account of non consideration of less drastic remedy like cancellation of bail though available under Section 437(5) of the Criminal Procedure Code, the detaining authority has passed the impugned order which has vitiated the subjective satisfaction and rendered the impugned order invalid.

7. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 23-1-1999 passed by the respondent no.2-Police Commissioner, Vaodara City against the petitioner is hereby quashed and set aside. The petitioner-detenu- Prafulbhai Krishnashanker Bhatt is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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